vote his stock, and seek his remedy at law. This rule was said to be for the protection of the minority. In the present case also the general principle is extended, but in a somewhat different way.

COURTS—THE NEW COMMERCE COURT—JURISDICTION—FIRST DECISION.—A petition was filed against the United States and others to set aside an order of the Interstate Commerce Commission (19 Interst. Com. R. 556) refusing to annul a provision of the "Uniform Demurrage Code," requiring privately owned cars while standing on private tracks to pay demurrage under certain circumstances, and to enjoin the respondent railroads from collecting such demurrage. The United States moved to dismiss the petition on the ground that the court had no jurisdiction in the premises. *Held,* that the commission's ruling, though granting no affirmative relief, should be construed as an "order" which the Commerce Court had jurisdiction to review under Act Cong. June 18, 1910, c. 309, 36 STAT. 539. *Procter & Gamble Co.* v. *United States et al.* (1911), 188 Fed. 221.

The jurisdiction of the court was denied on the ground that the petitioner was a shipper, and the Interstate Commerce Commission having merely dismissed the complaint and granted no affirmative relief, that there was nothing in the order of dismissal that affords any basis for action by the court. In other words, that it is only the carrier, against whom an order is made in favor of the shipper, that could bring the case up for review, the shipper being concluded by the action of the commission. The Commerce Court was by the act of its creation given "the jurisdiction now possessed by the Circuit Courts of the United States," *inter alia,* of "cases brought to enjoin, set aside, annul or suspend any 'order' of the Interstate Commerce Commission." The capacity to sue in the Commerce Court therefore depends on the general equity practice in force in the Circuit Courts. While the dismissal of the complaint was not in strictness an "order," in that it did not require or prohibit that anything be done, it was still one in effect, for it virtually approved the demurrage charge by the carrier. The court concluded that while it was proper for a shipper to apply first to the Interstate Commerce Commission for relief, to deny the right of review and to hold that the act prevented the court from interfering with an order, no matter how confiscatory to the shipper, would leave him without legal redress, and under such circumstances the act might well be declared unconstitutional as wanting due process of law. Later decisions have held that the Commerce Court in examining the report of the Interstate Commerce Commission is limited to the opinion of the majority. *Atchison, T. & S. F. Ry. Co.* v. *Interstate Com. Com.,* 188 Fed. 229; *Southern Pac. Co.* v. *Same,* 188 Fed. 241; a schedule of rates fixed by the Interstate Commerce Commission cannot be annulled by the Commerce Court as unreasonably high unless the shippers' right under the fifth amendment to the Constitution is violated. *Hooker* v. *Interstate Com. Com.,* 188 Fed. 242; *Eagle White Lead Co.* v .*Same,* 188 Fed. 256. The ruling of the Commission that a carrier's charge was unreasonable, based on findings from admitted facts, held not to be conclusive on Commerce Court. *Atchison, T. & S. F. Ry.* v. *Interstate Com. Com.,* 188 Fed. 229; *Southern Pac. Co.* v. *Same,* 188

Fed. 241. Power to establish reasonable rates for future transportation of interstate commerce is vested in the Commission, and not in the Commerce Court. *Hooker* v. *Interstate Com. Com.,* 188 Fed. 242; *Eagle White Lead Co.* v. *Same,* 188 Fed. 256.

It is interesting to note that the decision in the principal case is the first opinion rendered by the United States Commerce Court. This court was created by Act of Congress June 18, 1910, 36 Stat. 539: its principal jurisdiction being to review the orders of the Interstate Commerce Commission. It is composed of five Circuit Judges, four of whom are necessary to constitute a quorum. The President was authorized to appoint the first incumbents who, by the provisions of the statute were to serve for five, four, three, two, and one year respectively. The Chief Justice of the United States is given the power to appoint successors from among the Circuit Judges in commission. The membership of the court at present consists of the Hon. Martin A. Knapp, Hon. R. W. Archbald, Hon. William H. Hunt, Hon. John E. Carland, and Hon. Julian W. Mack.

COVENANTS RUNNING WITH THE LAND—BUILDING RESTRICTIONS.—X conveyed a lot to plaintiff's grantor, the deed containing a covenant not to build nearer than seven feet to the front line of plaintiff's lot; X had previously conveyed an adjoining lot to defendant's grantor, the deed containing a covenant to build a hotel not less than seven feet from the front line, and not less than twelve feet from the side line, of defendant's lot. In the deed of defendant's lot there was no reference to adjacent lands owned by X, but the covenant was stated to be "a covenant running with the land hereby conveyed." Plaintiff's grantor built a house one wall of which was on the side line of her lot, and contained several windows overlooking the twelve-foot strip on defendant's lot. Subsequently X quit-claimed to defendant "for the purpose of * * * releasing the covenants and restrictions" in the earlier deed to defendant's grantor. Plaintiff sued to enjoin defendant from building on the twelve-foot strip, and appeals from a decree for defendant. *Held,* that the two deeds did not create reciprocal obligations; that as there was no provision that the building restriction should apply to new structures, the parties evidently did not intend the restriction to be permanent and pass with the property; the covenant did not run with the land. *Berryman* v. *Hotel Savoy Co.* (Cal. 1911), 117 Pac. 677.

Whether or not a restrictive building covenant shall bind successive purchasers in favor of purchasers of other lots is a question of intention to be deduced from the facts and circumstances. 1 SMITH'S LEADING CAS. (Ed. 11) 92. No special words are necessary to create a covenant running with the land. *Electric City Land and Imp. Co.* v. *West Ridge Coal Co.,* 187 Pa. St. 500, 41 Atl. 458. The very existence of a restrictive covenant raises a presumption that it is for the benefit of the land retained. *Coughlin* v .*Barker,* 46 Mo. App. 54, but this is by no means conclusive. Undue weight has perhaps been given the absence of a provision extending the application of the covenant to buildings subsequently erected, for building restrictions apply with equal force to the second and successive buildings erected. *Holt* v. *Fleischman,* 75 App. Div. 593, 78